IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.585 OF 2003
IN
SUMMARY SUIT NO.5413 OF 1999

Jayantilal Tejraj Mehata Plaintiff

versus

Dr.Satyavan Bhau Nandoskar Defendant

S.S.Jinsiwala for plaintiff.

Ashish Mashrur i/by Neeta Parikh for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th July 2005

PC :

1. Heard learned advocate appearing for plaintiff. The advocate appearing for defendant states that the defendant has the papers and proceedings and he has not attended the Court today. He is, therefore, unable to argue the matter.

2. The aforesaid ground for seeking an adjournment does not deserve to be accepted. The Summons for Judgement is taken out in a Summary Suit filed in the year 1999. After the claim for

interest was given up partially, a fresh Summons for Judgement has been taken out which also has been served on 11th August 2003. There is no affidavit in reply filed by the defendant till date. Advocate for the defendant is also unable to argue the matter in the absence of papers. Hence the matter proceeds ex-parte. Request for adjournment rejected.

3. The claim in the summary suit arises out of dishonoured cheques. It has been categorically averred in the plaint that an amount which was advanced by plaintiff to the defendant was sought to be repaid by three post dated cheques. These post dated cheques are annexed as Exhibits A-1 to A-3. On their presentation, the bank dishonoured them on the ground that funds were not sufficient. Thereafter, reliance is placed by the plaintiff on the books of the plaintiff firm. Since amount was unpaid, the plaintiff approached the defendant several times but neither were fresh cheques issued nor the amounts were repaid otherwise. Thereafter, the legal notice followed which was also duly received. The plaintiff, therefore, files this suit to recover the amount under the cheques and also interest @ 18% p.a. under section 80 of the Negotiable Instruments

Act, 1881.

4. There is no reply to the Summons for Judgement nor is there any defence to the claim in the suit. Claim in the suit is not barred by limitation as well. The Summons for Judgement and the affidavit in support were served long time back. The defendant’s advocate has pleaded inability to argue the matter in the absence of any instructions.

5. In the result, there will be a decree as prayed. Refund of court fee and computation of advocate’s costs as per rules. However, further interest from the date of suit till payment and/or realisation shall be @ 12% p.a.. Office to compute the decreetal claim accordingly. Drawing up of decree is expedited.

(S.C.DHARMADHIKARI, J.)